

Regular Session, 2010

HOUSE BILL NO. 804

BY REPRESENTATIVE TIM BURNS

CIVIL/MANDATE: Provides relative to a presumptive authority in an act of transfer of immovable property

1 AN ACT

2 To enact R.S. 9:2730, relative to acts of transfer of immovable property; to provide for a  
3 presumption of authority; to provide for a limitation of actions; to provide for  
4 applicability; to provide for retroactive application; to provide for definitions; to  
5 direct the Louisiana State Law Institute to redesignate certain statutory provisions  
6 relative to acts of transfer of immovable property; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 9:2730 is hereby enacted to read as follows:

9 §2730. Authority of representative of legal entity

10 A. A declaration in an act of transfer of immovable property as to the  
11 authority of the representative of a legal entity creates a presumption that the  
12 authority as declared is correct and, except as provided by Subsection B of this  
13 Section, any subsequent alienation, encumbrance, or lease of the immovable shall not  
14 be attacked on the ground that the authority of the representative was not as stated  
15 in the declaration.

16 B. Any person may file an action to attack the subsequent alienation,  
17 encumbrance, or lease of the immovable property on the ground that the authority  
18 of the representative of the legal entity as stated in the initial act of transfer was false  
19 or incorrect; however, such action to attack the alienation, encumbrance, or lease

1        shall not affect the rights acquired by third parties entitled to rely upon the public  
2        records.

3                C. The presumption provided by Subsection A of this Section is hereby  
4        declared to be remedial and made retroactive to apply to any alienation, lease, or  
5        encumbrance made prior to August 15, 2010. Any person who has a right under  
6        Subsection B of this Section which right has not prescribed or otherwise been  
7        extinguished upon August 15, 2010, and who is adversely affected by the provisions  
8        of Subsection B of this Section shall have six months from August 15, 2010, to  
9        initiate an action to attack the transaction or otherwise be barred forever from  
10       exercising his right or cause of action.

11               D. As used in this Section, "legal entity" means a corporation, partnership,  
12        limited liability company, limited liability partnership, or unincorporated association.

13        Section 2. The Louisiana State Law Institute is hereby directed to redesignate R.S.  
14        35:11(B), (C), and (D) as R.S. 9:2731, and is further directed to make technical changes to  
15        any citations as necessary to reflect the statutory redesignations provided by this Act.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Tim Burns

HB No. 804

**Abstract:** Creates a presumption of authority of a legal entity in an act of transfer of immovable property.

Present law (C.C. Art. 3339) provides that matters pertaining to rights and obligations evidenced by a recorded instrument are effective as to a third person although not evidenced of record.

Proposed law provides that a declaration in an act of transfer of immovable property as to the authority of the representative of a legal entity creates a presumption that the authority as declared is correct.

Proposed law provides that any subsequent alienation, encumbrance, or lease of the immovable shall not be attacked on the ground that the authority of the representative was not as stated in the declaration, except as provided in proposed law.

Proposed law provides that any person may file an action to attack the subsequent alienation, encumbrance, or lease of the immovable property on the ground that the authority of the representative of the legal entity as stated in the initial act of transfer was false or incorrect;

however, the action to attack the alienation, encumbrance or lease shall not affect the rights acquired by third parties entitled to rely upon the public records.

Proposed law provides that the presumption created by proposed law is remedial and retroactive to any alienation, lease, or encumbrance made prior to Aug. 15, 2010. Any person who has a cause of action which right has not previously prescribed shall have six months from Aug. 15, 2010, to initiate an action to attack the transaction.

Proposed law defines "legal entity" as a corporation, partnership, limited liability company, limited liability partnership, or unincorporated association

Present law provides that a declaration as to one's marital status in an acquisition of immovable property creates a presumption that the marital status as declared in the act is correct, and further provides for the applicability of the presumption.

Proposed law retains present law but merely relocates certain provisions to Title 9 of the L.R.S. of 1950.

(Adds R.S. 9:2730)